IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLANTE JURISDICTION

WRIT PETITION NO. 2865 OF 1994

Shri D.S. Sakharia ... Petitioner
V/s
Income Tax Appellate
Tribunal, Pune. .... Respondent

Mr. S.N.Inamdar with Mr.Pramod Vaidya for petitioner
Dr.P.Daniel for respondent

CORAM: S. RADHAKRISHNAN
AND
J.H.BHATIA, JJ.
DATE : 5TH JULY,2005.

P.C.

1. Heard the learned counsel for the appellant and respondent.

2. By this petition, the petitioner is challenging a common order dated 30.03.1994 passed by the Income Tax Appellate Tribunal. With regard to two miscellaneous applications, one application filed by the petitioner and other application filed by the department seeking rectification of mistake in earlier order passed by the Tribunal dated 01.03.1993.

3. Shri Inamdar, learned counsel appearing on behalf of the petitioner very strongly contended that the Tribunal could not have exercised its power under section 254(2) of the Income Tax Act 1961 to

recall its earlier order and to pass a afresh order on merits by way of review. He also contended that under section 254 power granted to the Tribunal to rectify a mistake and power cannot be exercised by way of review.

4. Dr.Daniel,learned counsel appearing on behalf of the respondent contended that the respondent also could not sustain the impugned order dated 30.03.1994 which apprently appears to have been passed afresh instead of rectifying a mistake which has been pointed out to the Tribunal.

5. Shri Inamdar, learned counsel for the petitioner brought to our notice a judgment of Division Bench of Bombay High Court which analyses scope of powers under section 254(2) of the Income Tax Act,1961 in the case of **Commissioner of Income Tax v. Ramesh Electric and Trading Co.** reported in **1993(Bom.)497** wherein our High Court has clearly held as under:

> "In our view,the power of rectification under section 254(2) of the Income Tax Act can be exercised only when the mistake which is sought to be rectified is an obvious and patent mistake which is apparent from the record, and not a mistake which requires to be established by arguments and a long drawn

> process of reasoning on points on which there may conceivably be two opinions, as has been shown in the present case. Failure by the Tribunal to consider an argument advanced by either party for arriving at a conclusion is not an error apparent on the record, although it may be an error of judgment. In the present case, the alleged failure, at least on one count, is attributed by the assessee to the Income tax Officer and not the Tribunal. In our view, the Tribunal had no jurisdiction under section 254(2) to pass second order".

.6 Under the above facts and circumstances, we set aside and quash the order dated 30.3.1993 and remand back the matter to the Tribunal to consider and rectify the mistake as pointed out by the petitioner as well as the department by the aforesaid two miscellaneous applications on its own merits and in accordance with law and pass an appropriate reasoned order. Thus, we make it clear that the Tribunal not to review its earlier order. Rule is accordingly made absolute.

S.RADHAKRISHNAN,J.

J.H.BHATIA,J.